

ORDINANCE 06-14

To Amend The 2001 Revised Code Of The City of Dalton, Georgia; By The Addition Of A New Chapter 96 Captioned "Stormwater Management"; By The Addition of Article I To Chapter 96 Captioned "Illicit Discharge And Illegal Connection"; To Provide For An Effective Date; To Provide For The Repeal of Conflicting Ordinances; To Provide For Severability; And For Other Purposes.

BE IT ORDAINED by the Mayor and Council of the City of Dalton and by the authority of the same, **IT IS HEREBY ORDAINED** as follows:

Section 1:

Amend 2001 Revised Code of the City of Dalton, Georgia, by the addition of a new Chapter 96 captioned "Stormwater Management" and the addition of an Article I to said Chapter 96 captioned "Illicit Discharge and Illegal Connection", all of which shall read as follows:

Chapter 96

STORMWATER MANAGEMENT

Article I. Illicit Discharge and Illegal Connection

Sec. 96-1. General Provisions.

(a) *Purpose.* The purpose of this Article is to protect the public health, safety, environment and general welfare through the regulation of non-stormwater discharges to the City's municipal separate storm sewer system to the maximum extent practicable as required by State and Federal law, This Article establishes methods for controlling the introduction of pollutants into the City's municipal separate storm sewer system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) Phase H Stormwater General Permit. The objectives of this Article are to:

- (1) Regulate the contribution of pollutants to the City's municipal separate storm sewer system by any person, property owner, site operator, etc;
- (2) Prohibit illicit discharges and illegal connections to the City's municipal separate storm sewer system;
- (3) Prevent non-stormwater discharges, generated as a result of spills, inappropriate dumping or disposal, to the City's municipal separate storm sewer system; and

- (4) To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this Article.

(b) *Applicability.* The provisions of this Article shall apply throughout the municipal boundaries of the City.

(c) *Compatibility with other regulations.* This Article is not intended to modify or repeal any other Article, rule, regulation, other provision of law. The requirements of this Article are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this Article imposes restrictions different from those imposed by any other Article, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

(d) *Responsibility for Administration.* The Director of Public Works for the City, or his designee, shall administer, implement, and enforce the provisions of this Article.

Sec. 96-2. Definitions

Accidental Discharge means a discharge prohibited by this Article which occurs by chance and without planning or thought prior to occurrence.

City means the City of Dalton, Georgia.

City Administrator means the city administrator for the City.

City Municipal Separate Storm Sewer System means any facility designed or used for collecting and/or conveying stormwater, including but not limited to any roads with drainage systems, highways, City streets, curbs, gutters, inlets, catch basins, piped storm drains, pumping facilities, structural stormwater controls, ditches, swales, natural and man-made or altered drainage channels, reservoirs, and other drainage structures, and which is:

- a) Owned or maintained by the City of Dalton;
- b) Not a combined sewer; and
- c) Not part of a publicly-owned treatment works.

Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity means activities subject to the Georgia Erosion and Sedimentation Control Act. or NPDES General Construction Permits. These include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Director of Public Works means the appointed head of the City's public works department.

Illicit Discharge means any direct or indirect non-stormwater discharge to the City municipal separate storm sewer system, except as exempted in Section 96-3 of this Article.

Illegal Connection means either of the following:

a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

b) Any pipe, open channel, drain or conveyance connected to the City's municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 12226 (b)(14).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by the Georgia EPD under authority delegated pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Stormwater Discharge means any discharge to the storm drain system that is not composed entirely of stormwater.

Person means, except to the extent exempted from this Article, any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, city, county or other political subdivision of the state, any interstate body or any other legal entity.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind,

Pollution means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to

create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Premises mean any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

State Waters means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of Georgia which are not entirely confined and retained completely upon the property of a single person.

Stormwater Runoff or *Stormwater* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Structural Stormwater Control means a structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

Sec. 96-3 Prohibitions.

(a) *Prohibition of Illicit Discharges.* No person shall dispose, , discard, drain, or otherwise discharge, cause, or allow others under its control to dispose, discard, drain, or otherwise discharge into the City's municipal separate storm sewer system any contaminated or polluted water, liquids, materials, waste products, etc., other than stormwater.

The following discharges to the City's municipal separate storm sewer system are exempt from the prohibition provision above:

- (1) Water line flushing performed by a government agency, other potable water sources, landscape irrigation or lawn watering, non-commercial car wash water, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, natural riparian habitat or wetland flows, and any other water source not containing pollutants;
- (2) Discharges or flows from fire fighting, and other discharges specified in writing by the City as being necessary to protect public health and safety;
- (3) The prohibition provision above shall not apply to any non-stormwater discharge permitted under an approved NPDES permit or order issued to the discharger and administered under the authority of the Georgia Environmental Protection Division (EPD) and the United States Environmental Protection Agency (USEPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and

provided that written approval has been granted for any discharge to the City's municipal separate storm sewer system.

(b) *Prohibition of Illegal Connections.* The construction, connection, use, maintenance or continued existence of any illegal connection to the City's municipal separate storm sewer system is prohibited.

- (1) This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (2) A person violates this Article if the person connects a line conveying sewage to the City's municipal separate storm sewer system, or allows such a connection to continue.
- (3) Improper connections in violation of this Article must be abated, disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system with approval of Dalton Utilities.
- (4) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the City's municipal separate storm sewer system, shall be located by the owner or occupant of that property upon receipt of written Notice of Violation from the City requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the City.

Sec. 96-4 Industrial or Construction Activity Discharges.

Any person subject to an NPDES Industrial Stormwater Permit or NPDES Construction Activity Permit administered by the Georgia EPD shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to allowing discharges to the City's municipal separate storm sewer system.

Sec. 96-5 Access and Inspection of Properties and Facilities.

The Public Works Director or his designee shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this Article.

(a) If a property or facility has security measures in force which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to the Public Works Director or his designee.

(b) The property owner or operator shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge stormwater.

(c) The City shall have the right to set up on any property or facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of flow discharges.

(d) The City may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the City. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and water quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

(f) Unreasonable delays in allowing the City access to a facility are a violation of this Article.

(g) If the City has been refused access to any part of the premises from which stormwater is discharged or would likely be discharged, and the City is able to demonstrate probable cause to believe that there may be a violation of this Article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Article or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

Sec. 96-6 Notification of Accidental Discharges and Spills.

(a) Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-stormwater discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into stormwater, the City's municipal separate storm sewer system, State Waters, or Waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

(b) Said person shall notify the City and other appropriate agencies (State, Federal, etc.) in person or by phone, facsimile no later than twenty-four (24) hours after the discharge, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works within three (3) business days of the initial notice. If the discharge of prohibited materials emanates from a commercial or

industrial establishment, the property owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill.

(c) In the event of such a release of hazardous materials, emergency response agencies and/or other appropriate agencies shall be immediately notified.

(d) Failure to provide notification of a release as provided above is a violation of this Article.

Sec. 96-7 Violations, Enforcement and Penalties.

(a) *Violations.*

- (1) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. Any person who has violated or continues to violate the provisions of this Article, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- (2) In the event the violation constitutes an immediate danger to public health or public safety, the City is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The City is authorized to seek costs of the abatement as outlined in this Article.

(b) *Notice of Violation.* Whenever the City finds that a violation of this Article has occurred, the City may order compliance by a written Notice of Violation.

(1) The Notice of Violation shall contain:

- a. The name and address of the alleged violator;
- b. The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- c. A statement specifying the nature of the violation;
- d. A description of the remedial measures necessary to restore compliance with this Article and a time schedule for the completion of such remedial action;
- e. A statement of the penalty or penalties that shall or may be assessed against the person to whom the Notice of Violation is directed; and,

- f. A statement that the determination of violation may be appealed to the City by filing a written notice of appeal with the City Clerk within fifteen (15) days of service of Notice of Violation.

(2) Such notice may require without limitation:

- a. The performance of monitoring, analyses, and reporting;
- b. The elimination of illicit discharges and illegal connections;
- c. That violating discharges, practices, or operations shall cease and desist;
- d. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- e. Payment of costs to cover administrative and abatement costs; and,
- f. The implementation of pollution prevention practices.

(c) *Appeal of Notice of Violation.* Any person receiving a Notice of Violation may appeal the determination of the City. The notice of appeal must be received by the City Clerk within fifteen (15) days from the date of the Notice of Violation. The failure to timely file a notice of appeal shall be deemed a waiver of appeal. Hearing on the appeal before the City Administrator, or his designee, shall take place within fifteen (15) days from the date of receipt of the notice of appeal. The decision of the City Administrator, or his designee, shall be final.

(d) *Enforcement Measures After Appeal.* If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or in the event of an appeal, within the later of five (5) days of the decision of the City Administrator upholding the decision of the City or the time schedule set forth in the Notice of Violation, then the person receiving the Notice of Violation will be in non-compliance and representatives of the City may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the City or its designated contractor to enter upon the premises for the purposes set forth above,

(e) *Costs of Abatement of the Violation.*

- (1) Within thirty (30) days after abatement of the violation, the owner of the property will be notified by the City of the cost of abatement, including administrative costs. The property owner may file a written protest with the City Clerk objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice, and the appeal process set forth in Sect. 96-7 (c) shall be followed. The failure to file a timely written protest shall be deemed a waiver of the right to protest. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, not paid within five (5) days after a decision on said appeal that requires payment, the charges shall become a special assessment

against the property upon which the violation occurred and shall constitute a lien on such property for the amount of the assessment.

- (2) Any person violating any of the provisions of this Article shall become liable to the City by reason of such violation.

(f) *Civil Penalties.* In the event a person becomes non-compliant as provided in Sec. 96-7 (d), or otherwise violates this Article, then such person shall be subject to citation to the Municipal Court of the City and subject to a penalty not to exceed One Thousand Dollars (\$1,000). Each day the violation remains unremedied after the person becomes non-compliant shall be considered a separate violation.

(g) *Violations Deemed a Public Nuisance.* In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Article is a threat to public health, safety, welfare, and environment and is declared and deemed a nuisance, and may be abated by injunctive or other equitable relief as provided by applicable law.

(h) *Remedies Not Exclusive.*

- (1) The remedies listed in this Article are not exclusive of any other remedies available under any applicable Federal, State or local law and the City may seek cumulative remedies.
- (2) The City may recover attorney's fees, court costs, and other expenses associated with enforcement of this Article, including sampling and monitoring expenses.

Section 2:

This Ordinance shall be effective upon the posting of this Ordinance in two (2) public places in the City of Dalton for five (5) consecutive days following its enactment by the Mayor and Council, the public health, safety, and welfare requiring it.

Section 3:

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4:

It is hereby declared to be the intention of the Mayor and Council of the City of Dalton that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and

if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance.

SO ORDAINED this ____ day of _____, 2006.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the ordinance was made by Alderman _____, seconded by Alderman _____, and upon the question the vote is ____ ayes, ____ nays, and the Ordinance is adopted.

ATTEST:

CITY CLERK

MAYOR

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of _____.

CITY CLERK, CITY OF DALTON